

A.S.No.73 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 04.03.2025

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

A.S.No.73 of 2017
and
CMP.No.5317 of 2017

1.D.Selvaraj
2.D.Nagarajan

...Appellants

Vs

1.Jayashankar
2.Saritha Devi

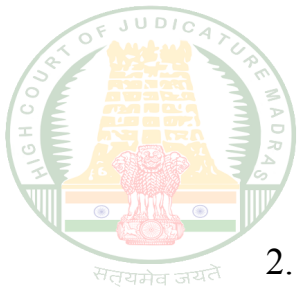
... Respondents

PRAYER: Appeal Suit filed Under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgment and decree dated 08.01.2013 in O.S.No.162 of 2008 on the file of the Principal District Court, Chengalpattu.

For Appellants	: Mr.V.Srimathi
For Respondents	: Mr.D.Ashok Kumar

JUDGEMENT

The appellants have filed this appeal against the judgment and decree dated 08.01.2013 passed in O.S. No. 162 of 2008 by the learned Principal District Judge, Chengalpattu.



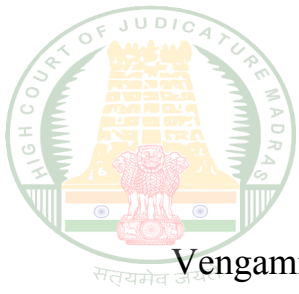
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2. For the sake of convenience, the parties herein are referred to as they were ranked in the original suit.

3. The appellants are the defendants in suit O.S. No. 162 of 2008 on the file of the Principal District Judge, Chengalpattu. The suit was filed by the respondents/plaintiffs seeking partition of their one-third share in the entire suit property.

4. The defendants contested the suit, and after hearing both sides, the learned trial judge partly decreed the suit in favour of the plaintiffs. The trial court granted the plaintiffs one-third share in the plaint A-Schedule properties and in items 1, 2, 4, 5, 7, 9, and 10 of the B-Schedule properties. However, the suit was dismissed with respect to items 3, 6, and 8 of the B-Schedule properties. Aggrieved by this decision, the defendants have preferred the present first appeal.

5. The brief facts of the case: The plaintiffs' mother, Kanniammal, and the defendants are the daughter and sons of one Duraisamy Naicker and



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Vengammal. Kanniammal passed away intestate on 14.11.2000, leaving behind the plaintiffs as her legal heirs. Her husband, Jayaraman, had predeceased her. After Kanniammal's demise, the plaintiffs were brought up under the care of their maternal grandfather, Duraisamy Naicker, and their maternal grandmother, Vengammal. They were also permitted to reside in a portion of the A-Schedule property, and the income from the B-Schedule property was shared with them. On 09.12.2002, Duraisamy Naicker passed away, leaving behind his wife Vengammal, the defendants, and the plaintiffs as his legal heirs. Their grandmother, Vengammal, also passed away in 2007. Following this, the plaintiffs and defendants constituted a Hindu joint family and were jointly in possession of the suit properties. The plaintiffs remained in occupation of A-Schedule property and were paying taxes and electricity charges. However, defendants 1 and 2 colluded together and displayed a hostile attitude toward the plaintiffs. They refused to agree to an amicable partition despite receiving notice. Consequently, the plaintiffs filed the suit. The plaintiffs also reserved their right to claim one-third share of the rent collected by the defendants from the A and B-Schedule properties. They contended that the properties were ancestral in



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nature and that they were entitled to one-third share in the suit properties.

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6. Defendants 1 and 2 contested the suit, admitting the relationship but denying the plaintiffs' claims over the properties. They asserted that the B-Schedule property was the self-acquired property of their father, acquired through a sale deed dated 22.12.1980. They further stated that item 1 of the B-Schedule property, along with items 2 to 8, was purchased by their father through another registered sale deed (Document No. 2784/80). From the time of purchase, their father enjoyed the property as its absolute owner. Out of love and affection, their father, Duraisamy Naicker, executed a settlement deed on 21.09.1993 in favour of the first defendant, transferring items 6 and 8 of the B-Schedule property. From that time onwards, the first defendant became the absolute owner and was in possession of these properties. In respect of items 3, 6, and 8, Duraisamy Naicker executed settlement deeds in favour of the first defendant, who, in turn, executed a settlement deed dated 31.05.2004 in favour of second defendant. From that time onwards, the second defendant enjoyed possession of these items. Hence, the defendants prayed for the dismissal of the suit.



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7. Before the trial court, both parties adduced oral and documentary evidence. On the plaintiffs side, 1st plaintiff was examined as P.W.1 and Exs.A1 to Ex.A18 were marked. On the defendants' side, 2nd defendant was examined as D.W.1 and Ex.B1 to Ex.B.3 were marked.

8. The trial court framed the primary issues for determination, namely: *i. Whether the plaintiffs were entitled to one-third share in the suit property ? and ii. Whether the settlement deeds executed by Duraisamy Naicker were true and valid ?*

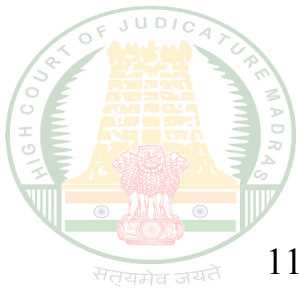
9. During arguments, the plaintiffs' counsel contended that although the properties were described as ancestral properties of Duraisamy Naicker, there was an error in the description of the B-Schedule properties. They relied on Exhibit A1 – Anubandham, Exhibit A2 – Enjoyment Certificate issued by the Tahsildar, Saidapet, Exhibit A3 – Enjoyment Certificate issued by the Tahsildar, Tambaram. These documents purportedly proved that the plaintiffs and defendants 1 and 2 jointly



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possessed the A-Schedule property. Based on this, the trial court granted one-third share to the plaintiffs in the A-Schedule property.

10. In respect of the B-Schedule properties, the defendants relied on the settlement deeds (Ex.B1 and B2), which showed that out of love and affection, Duraisamy Naicker executed settlement deeds in favour of the first defendant. Based on Ex.B1 to Ex.B3, the learned trial judge concluded that the B-Schedule properties were absolute properties of Duraisamy Naicker, as evidenced by the purchase documents. Since he had executed two settlement deeds in favour of the first defendant out of love and affection, the trial court held that items 3, 6, and 8 of the B-Schedule property were lawfully transferred and hence, dismissed the plaintiffs' claim over these items. However, for the remaining B-Schedule properties, the court granted the plaintiffs one-third share. Similarly, one-third share was granted in the A-Schedule property. Accordingly, the suit was partly decreed. Challenging the findings of the trial court, the defendants have now filed the present appeal.



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11. The learned counsel for the defendants argues that the plaintiffs failed to prove the existence of an ancestral nucleus, without which the relief granted in their favour by the learned trial judge is erroneous and liable to be set aside. Furthermore, he submits that there is no evidence of common enjoyment of the suit property concerning the one-third share granted in A-Schedule, making the judgement illegal and liable to be set aside. Additionally, the trial court failed to consider that the plaintiffs were in permissive occupation of a portion of the A-Schedule property. However, the trial court erroneously granted them one-third share as if they were in joint possession of the property. Therefore, he prays for the findings of the trial court to be set aside.

12. In response, the learned counsel for the respondents/plaintiffs submits that the mention of the property as "ancestral" in the first paragraph of the plaint was a mistake. However, the plaintiffs claim one-third share in the suit property, which was rightly granted by the trial court, excluding certain items in the B-Schedule property based on the settlement deeds. The plaintiffs have not preferred an appeal challenging the trial court's findings.



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Upon reviewing the grounds raised by the defendants, they have challenged the share granted to the plaintiffs in the A-Schedule property, particularly.

13. Upon considering the submissions from both sides, the points to be decided are as follows:

A. Whether the properties in question are ancestral or self-acquired?

B. Whether the plaintiffs are entitled to a share in the suit properties?

14. It is undisputed that the plaintiffs' mother, Kanniammal, and defendants 1 and 2 are the daughters and son of Duraiswamy Naicker and his wife, Vengammal. Kanniammal passed away, and her husband predeceased her, leaving the plaintiffs as legal heirs. After their parents' demise, the plaintiffs were under the care of their grandparents and occupied a portion of the A-Schedule property.

15. The defendants contend that the plaintiffs were in permissive occupation, but there is no evidence to support this claim. On the other hand, the Anubandham and Enjoyment Certificate (Exhibits A-1 to A-3)



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clearly indicate that the plaintiffs and defendants jointly possessed and enjoyed the A-Schedule property, even though its nature was not properly described. Based on these documents, it is evident that the plaintiffs and defendants were in joint possession. Therefore, as legal heirs of Kanniammal, the plaintiffs are entitled to one-third share, which was rightly granted by the trial court and requires no interference from this court.

16. Upon perusal of the plaint concerning the B-Schedule property, the plaintiffs initially stated that it was ancestral property. However, as per the sale deeds produced by the defendants (Exhibits B-1 to B-3), it is evident that Duraiswamy Naicker purchased the property during his lifetime. The plaintiffs not disputed that the B-Schedule property was self-acquired by Duraiswamy Naicker. Additionally, the settlement deeds relied upon by the first defendant (Exhibits B-1 and B-2) demonstrate that, out of love and affection, Duraiswamy Naicker executed settlement deeds in favour of the first defendant. Furthermore, as per the sale deeds (Exhibits A-4, A-7, and A-8), the B-Schedule properties were self-acquired by Duraiswamy Naicker.



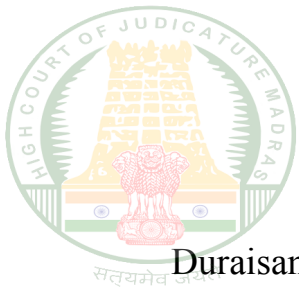
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17. The learned counsel for the plaintiffs submits that the properties were mistakenly described as ancestral property. However, in reality, properties are self-acquired properties, were purchased through sale deeds. The mere mention of "ancestral" in the plaint averment does not conclusively establish that the properties are ancestral. The sale deed produced by the plaintiffs clearly proves that the B-Schedule properties are self-acquired.

18. As per the settlement deeds, Ex.B1 and Ex.B2, out of love and affection, the first defendant's father, Duraisamy Naicker, executed settlement deeds in favour of the first defendant. Thereafter, through sale deeds, items No.3,6 and 8 were sold by the first defendant to the second defendant, who became the absolute owner.

19. Therefore, the trial Court rightly dismissed the suit concerning items No.3,6 and 8. Regarding the remaining suit items, which are the self-acquired properties of the plaintiffs' grandfather, the legal heirs of



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Duraisamy Naicker's predeceased daughter are entitled to one-third share.

The trial Court correctly reached this conclusion, and there is no need for interference.

20. Accordingly, the plaintiffs are entitled to one-third share in both the A-Schedule and B-Schedule properties, as discussed above. Therefore, the first point for consideration is answered. The settlement deeds are valid, addressing the second point for consideration. The findings rendered by the learned trial judge are well-reasoned and require no interference.

21. Accordingly, this appeal suit is dismissed. Findings of trial Court confirmed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

04.03.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Principal District Judge, Chengalpattu.
2. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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